

APPEAL NO. 93344

On January 28, 1993, and February 26, 1993, a contested case hearing was held in (city), Texas, regarding whether a compensable injury resulted from an incident on (injury). The hearing officer, (hearing officer), at the end of that hearing, approved attorney's fees for both claimant's counsel, Mr. A, and carrier's counsel. Appellant (claimant) asserts on appeal of the attorney's fee that the amount is too large. No response was received.

DECISION

Finding no abuse of discretion in the hearing officer's determination in this case, we affirm.

Claimant asserts that the \$3,310.99 withheld as attorney's fees from the accrued temporary income benefits (TIBS) paid through March 29, 1993 (\$13,061.10), is sufficient. He does not want the carrier to deduct 25% in attorney's fees from the TIBS he gets weekly after that point.

The question of compensability was hotly litigated at the hearing. As stated, the hearing was conducted on two dates. In addition, while the injury was stated as occurring on June 29th, claimant had been injured on (date of injury). The hearing record refers to both incidents. The record also contains some documents indicating that the incident in question was staged.

The counsel for claimant submitted 15 pages of typewritten detail as to time he spent on the case in addition to the Commission forms, copies of expenses, and a two page letter of explanation. The hearing officer approved \$8,875 based on 71 hours of work at \$125.00 per hour. While the overwhelming amount of the time requested was approved, the hearing officer did delete time relative to the attorney's fee itself. As a result of this hearing, the hearing officer also approved \$6,205 for the carrier's attorney, all of the requested attorney time.

Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) provides that hours greater than those provided in the guidelines for maximum hours must be demonstrated as justifiable by the effort or the complexity in regard to the case. The attorney provided detail as to the effort expended and he was successful in securing an award as to compensability and payment of TIBS against significant opposing evidence. The order correctly noted that the remainder of the attorney's fee is to be deducted from the claimant's income benefits and is not to exceed 25% of each payment.

Attorney's fees questions are reviewed to see if there is an abuse of discretion by the hearing officer. See Texas Workers' Compensation Commission Appeal No. 92375, dated September 14, 1992, and Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. While the total amount of the attorney's fees is large, we do not find that times spent were not in the "client's interest." [see Rule 152.4(c)].

Questions do arise as to whether some time spent for the client was in regard to the workers' compensation claim (.50 hours in regard to claimant's lack of payments on house and electricity bill with attorney to cosign a loan on January 28, 1993; .25 hours in regard to house payment and foreclosure on February 5th; .25 hours about the need for a letter for mortgage company and for welfare on February 8th; and on February 9th, .25 hours in regard to mortgage information with claimant, .50 hour for letter to the mortgage company, and .50 hour for claimant to review letter to the mortgage company.) These times total two and one-quarter hours (less than two percent of the total hours claimed). We cannot say that this time was not related to the workers' compensation claim.

We do not find that the hearing officer abused her discretion and affirm the decision as to attorney's fees.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge